IN THE

Supreme Court of the United States

October Term, 1954.

No. 153.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

DREXEL & CO.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

SUPPLEMENTAL BRIEF FOR DREXEL & CO.

HENRY S. DRINKER
THOMAS REATH
JOHN MULFORD
117 S. 17th Street,
Philadelphia 3, Pa.

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SUPPLEMENTAL BRIEF FOR RESPONDENT.

This supplemental brief is filed, pursuant to Rule 24(4) of the Rules of this Court, in answer to the Commission's Reply, which was not received by us until October 4, 1954.

In this case the Court below held that the Commission had no jurisdiction over the fee agreed to be paid by Bond & Share to Drexel for services rendered in the reorganization of Electric.

In its Petition for Certiorari the Commission took the position that this decision involved an important question of Federal law, and stated that there were four proceedings pending before the Commission in which this same issue was involved. The implication of its argument was that

unless the Supreme Court reviewed the present case the effect of the decision below would be to deprive the Commission of jurisdiction over fees in the four cases pending before it.

In our Brief in Opposition, we showed, *first*, that the four pending cases were on their facts fundamentally different from the present case, and *second*, that under every decided case (including the opinion of Chief Judge Chase in the present case, R. 307-308), it is clear beyond any question that the Commission does have jurisdiction over the fees in the four pending proceedings. Thus the decision in the present case, whatever it might have been, would have had no effect whatever on these other cases.

In its Reply the Commission has, as we see it, completely reversed its former position. Now, instead of arguing that a review by the Supreme Court of the present decision is necessary because of the effect it might have on the four pending cases, the Commission argues that if it has fee jurisdiction in these pending cases (which is conceded) it should by analogy have such jurisdiction in the present case and that the Court below erred in deciding otherwise.

In other words, the Commission now confines itself to the argument that the present case was wrongly decided by the Court below.

The Commission does not (and indeed it could not) challenge our statement (p. 8 of our Brief in Opposition) that all the proceedings under Section 11 of the Act are now substantially completed. If there were any proceedings now pending, either before the Commission or before any Court, where the effect of the decision in the present case would be to deny or restrict the Commission's fee jurisdiction, the Commission would of course have referred to them in its Petition or its Reply. We may therefore take it that there are now none, and that there will be none in the future. And the mere assertion that a case has been wrongly decided in the Court below is not, as we understand

it, sufficient to justify the granting of a Petition for Certiorari.

Respectfully submitted,

HENRY S. DRINKER
THOMAS REATH
JOHN MULFORD
117 South 17th Street
Philadelphia 3, Pa.
Counsel for Drexel & Co.

October 5, 1954